



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,395	02/12/2004	Doyle Malvin Burdette	HZL-01	5785
38979	7590	11/02/2005		
CRAVEN & REID, LLC 12 E. STONE AVENUE GREENVILLE, SC 29609			EXAMINER SMITH, KIMBERLY S	
			ART UNIT 3644	PAPER NUMBER
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,395

Applicant(s)

BURDETTE ET AL.

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-14,16-26,28-38,40-51,53-55 and 57-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-14,16,17,25,26,28-38,40-51,53-55 and 57-61 is/are allowed.
- 6) ☒ Claim(s) 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-61 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

2. Applicant's election with traverse of the election requirement in the reply filed on 08/15/05 is acknowledged. Upon reconsideration of the restriction requirement, it is deemed that the manner in which the fly nap is adhered, the material from which the fly nap is made and the means for attaching the device to the user are not considered to be patentably distinct inventions. As such, the restriction requirement is withdrawn. All claims will be examined on the merits.

Claim Objections

3. Claim 1 is objected to because of the following informalities: line 10: replace "on" with - -one- -; line 11: insert a semi-colon at the end of the line; line 14: insert - -in- - following "assist". Appropriate correction is required.
4. Claim 25 is objected to because of the following informalities: line 10: replace "on" with - -one- -; line 11: insert a semi-colon at the end of the line. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3644

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 18, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, US Patent 5,425,194.

Miller discloses a storage case comprising an openable drum (10), a fastening (35, 39, 41) for securing in drum form and a fly nap (31) carried on the interior drum surface.

Regarding the recitation “for releasably engaging the hook portion of flies...”, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding claims 21 and 22, Miller discloses the invention substantially as claimed despite positively disclosing the manner in which the fly nap (31) is attached. However, the stitching and the bonding of the interior is considered to be a product-by-process limitation and as such, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, these limitations have not been given patentable weight.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3644

8. Claims 19, 20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, US Patent 5,425,194.

Miller discloses the invention substantially as claimed including the drum comprising a weather resistant material (i.e. PVC). However, Miller does not disclose the drum being comprised of leather. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use weather resistant leather as the material from which the drum is made, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 20, Miller discloses the invention substantially as claimed. However, Miller discloses the use of fastening strap instead of a snap fastener. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use snap fasteners since the examiner takes Official Notice of the equivalence of a strap fastener and a snap fastener for their use in the fastening art and the selection of any of these known equivalents to fasten a device would be within the level of ordinary skill in the art.

Regarding claims 23 and 24, Miller discloses the invention substantially as claimed. However, Miller does not disclose the fly nap being comprised of wool or synthetic fleece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use weather resistant leather as the material from which the fly nap is comprised, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Art Unit: 3644

Allowable Subject Matter

9. Claims 1, 2, 4-14, 16, 17, 25, 26, 28-38, 40-51, 53-55 and 57-61 are allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pruett (US 1,556,127) and Hanaford (US 1,414,875).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER

Kimberly S Smith
Examiner
Art Unit 3644

kss